IN THE COUNTY COURT OF VICTORIA
AT MELBOURNE
CRIMINAL DIVISION

Revised
Not Restricted
Suitable for Publication

Case No. CR-21-00675
Case No. CR-21-00453

DIRECTOR OF PUBLIC PROSECUTIONS

v

YVONNE SCOTT
JAMES SCOTT

JUDGE:	HIS HONOUR JUDGE WRAIGHT
WHERE HELD:	Melbourne
DATE OF HEARING:	9 August 2021, 6 October 2021, 15 December 2021
DATE OF SENTENCE:	15 December 2021
CASE MAY BE CITED AS:	DPP v Scott & Scott
MEDIUM NEUTRAL CITATION:	[2021] VCC 2146

REASONS FOR SENTENCE

Subject:	CRIMINAL LAW – Sentencing.
Catchwords:	Plea of guilty – Theft – Obtain financial advantage by deception – Offenders husband and wife – Wife transferred funds from employer into offenders' joint account – Gross breach of trust (Yvonne Scott) – Wife claimed WorkCover payments by providing false information – Husband complicit in offending – Both offenders had health conditions and no criminal history – Remorse – *Verdins* principles 5 and 6 – Delay – COVID-19 pandemic.
Legislation Cited:	*Crimes Act 1958* ss 74, 82; *Sentencing Act 1991* ss 6AAA, 9.
Cases Cited:	*Worboyes v The Queen* [2021] VSCA 169.
Sentence:	Imprisonment for a period of 3 years with a non-parole period of 18 months (Yvonne Scott); Imprisonment for a period of 2 years and 4 months with a non-parole period of 14 months (James Scott).

APPEARANCES:	Counsel	Solicitors
For the Director of Public Prosecutions	Mr P Pickering	Office of Public Prosecutions
For Yvonne Scott	Mr N Goodfellow (9 August 2021) Mr S Andrianakis (6 October, 15 December 2021)	Rolfe Criminal Law

For James Scott	Mr J Lowy	Kate Freshwater Lawyer

HIS HONOUR:

Introduction

1 Yvonne Scott and James Scott, you have each pleaded guilty to four rolled-up charges of theft contrary to s 74(1) of the *Crimes Act 1958*, which carries a maximum penalty of 10 years imprisonment (Charges 1 to 4).

2 You have also each pleaded guilty to one rolled-up charge of obtaining financial advantage by deception contrary to s 82(1) of the *Crimes Act 1958*, which carries a maximum penalty of 10 years imprisonment (Charge 5).

3 You both have no prior Criminal Record.

Circumstances of the offending

4 A prosecution opening was tendered on the plea and can be summarised as follows:

5 You, Yvonne Scott, are 71 years of age and you, James Scott, are 78 years of age. You are a married couple and live together at 2176 Strathallan Road, Lockington.

6 The victim in relation to Charges 1 to 4 is Redgarson Pty Ltd (ACN 005 577 464), formerly known as R T Edgar Portsea Pty Ltd (ACN 005 577 462), a real estate agency which is part of the RT Edgar Group.

7 Colin Warwick Anderson was the sole director of RT Edgar (Portsea) Pty Ltd and one of two directors of RT Edgar Toorak Pty Ltd.

8 You, Yvonne Scott, commenced working as an office manager for the two companies in 2002 but ceased working for the Toorak office in 2012 when you and your husband moved to your current address.

9 You continued to work as an office manager for the Portsea office from home, paying bills and wages, payroll tax and BAS payments, with all accounts being sent to your home address for processing.

10 At your home address you both operated a separate business called ‘Lockington Hooves and Paws’, selling horse apparel and providing agistment services.

11 Between February 2015 and October 2015, you, Yvonne Scott, were also employed by Ayva Investments Pty Ltd, which traded under the company name of ‘Stride Events’ and operated as an event management company.

12 While working for Stride Events, you were subject to management actions and you resigned from your position on 6 October 2015, the resignation taking effect from 15 October 2015. However, when you were confronted by your employer on 7 October 2015 about you accessing emails without authority, you ceased employment on that day instead.

13 On 8 October 2015, you obtained a certificate of capacity stating that you had no capacity for work between 8 October 2015 and 4 November 2015 and you signed this form.

14 You submitted a WorkCover claim relying on mental health grounds of depression and anxiety for work related stress, stating that your employer, Stride Events, was trading while insolvent. This claim was withdrawn one week later.

15 However, on 14 March 2016, you re-submitted the claim for WorkCover payments, which was accepted on 11 April 2016 by Allianz Insurance, the WorkCover insurance agent for Stride Events.

16 On 11 April 2016, a letter was sent from the WorkCover insurance agent to you stating that ‘If you return to work other than with your injury employer (whether as a self-employed person or with another employer) you must immediately inform your injury employer’.

17 In order to continue to receive weekly WorkCover payments, a worker is obliged to provide certificates of capacity. Between the date of acceptance of your WorkCover claim until 20 March 2018, you provided 32 certificates of capacity to

Allianz, each signed by you and stating that you had not worked during the previous month.

18 These certificates of capacity were provided to you by your general practitioner, Dr Remon Eskandar, who you told on each occasion that you had not worked during the relevant period.

19 You stated to him that you could not perform the basic mathematical functions of your prior job due to your mental state. On multiple occasions you denied being able to work when asked by Dr Eskandar.

20 Dr Eskandar was of the opinion that if you had said that you were performing any work, he would have certified you as fit for 'modified duties'.

21 You, James Scott, assisted your wife to make her WorkCover claims.

22 However, at this time you, Yvonne Scott, were working from home as the administrator and bookkeeper for RT Edgar Portsea, handling both the general administration of the office and operating the company bank accounts.

23 Mr Anderson, the director of RT Edgar (Portsea) Pty Ltd, was unaware of this WorkCover claim and was first notified of it when contacted by WorkCover investigator, Perdita Doherty, on 23 July 2018.

24 The information provided by Mr Anderson on 6 August 2018 confirmed that you, Yvonne Scott, received monthly salary payments of $71,592.08 between October 2015 and October 2017, and $18,778.33 between November 2017 and March 2018.

25 The total amount of WorkCover payments received by you, Yvonne Scott, while working but denying that you were doing so was $101,038.51. It is these facts that relate to Charge 5, obtain financial advantage by deception. This money was paid into the ANZ advantage cheque account held by you both.

26 On 23 November 2018, WorkCover sent a letter to you, Yvonne Scott, inviting you to participate in a record of interview or provide a written response to the allegations of non-compliance with the WorkCover legislation. No response was received from you.

27 While working for Stride events, you, Yvonne Scott, continued to work from home doing the bookkeeping for RT Edgar Portsea.

28 Following the cessation of your employment with Stride Events on 7 October 2018, much of this work was performed by you, James Scott, without the knowledge of the management or owners of RT Edgar Portsea, although you, Yvonne Scott, continued to make banking transfers using the QuickBooks accounting system and Westpac Listpay banking program.

29 Invoices would be provided to you, Yvonne Scott, by RT Edgar Portsea, you would enter them into the Quickbooks system and then make payment to the relevant creditors using Listpay.

30 At this time, you, Yvonne Scott, were paid $163,225.18 between January 2015 and October 2018 for your work, being approximately $45,000 per year.

31 During the period 13 January 2015 to 28 December 2017, you, Yvonne Scott made numerous transfers of funds to you and your husband's personal accounts using the Listpay system. When this system was decommissioned at the end of 2017, you then made direct transfers from the RT Edgar Portsea company accounts to you and your husband's personal bank accounts.

32 An analysis of the thefts and operations of bank accounts was subsequently prepared by Kirsten Hills, senior forensic accountant for Victoria Police. This confirms that during the relevant period, you, Yvonne Scott transferred to you and your husband's various accounts a total of $934,542.46.

33 After deduction of your salary entitlements of $163,225.18, the total amount stolen by you both is $771,307.28.

34 This was stolen by year as follows:

- 2015: $113,000.59 (Charge 1);
- 2016: $185,825.40 (Charge 2);
- 2017: $344,750.94 (Charge 3); and
- 2018 (to October 4): $127,703.35 (Charge 4).

35 The total number of transactions was 129.

36 Mr Anderson became aware of the fraudulent transactions following advice from the WorkCover Investigator, Perdita Doherty, about suspicious transactions from the RT Edgar accounts to your accounts. Mr Anderson then engaged the company auditor, Leigh Gleeson, to analyse the transactions.

37 The investigation was referred to Victoria Police on 9 February 2019.

38 You, Yvonne Scott, were interviewed by police on 11 June 2020. You confirmed your employment with both Stride events and RT Edgar Toorak and Portsea during the relevant periods. You also stated that your husband did most of the accounting work for you after you left Stride Events. You denied that you were working during the period you were on WorkCover, stating that your husband did the work, and you did 'virtually nothing'. Regarding the thefts from RT Edgar, you stated that you could not explain how this happened.

39 You, James Scott, were interviewed by police on 11 June 2020. You said that you were told by your wife in October 2018 that she had 'done something bad' and had stolen money from RT Edgar. You then had meetings with the director of RT Edgar Portsea and made your own reconciliation of the accounts as to what was stolen.

40 You also stated that:

- You have a Bendigo bank account; your wife has the ANZ account, and you look after all the accounts;
- You now look after all the accounts, but your wife did until six months earlier;
- Decisions about spending money were made jointly;
- You assisted your wife to make the WorkCover claim;
- You were doing the work for RT Edgar, but your wife would be involved in payments and monitoring the company finances. RT Edgar would write off the cost of advertising once a year and that is where your wife took the money from when she reconciled it;
- You would do the basic bookkeeping up to trial balance and your wife would do the reconciliations. You explained the operation of the Listpay system;
- Your wife was doing some of the work for RT Edgar while she was on WorkCover and she failed to advise WorkCover of that;
- You knew but did nothing about this because you both needed the money;
- You knew what was happening with the WorkCover claim and went along with it; and
- You denied knowing about the theft of money from RT Edgar Portsea and said that you never had any reason to question the money that was coming in.

Nature and gravity of the offending

41 In relation to Charges 1 to 4, it is self-evident that the offending represents a gross breach of trust by you, Yvonne Scott. You had worked for RT Edgar for a number of years and were a trusted employee. You, James Scott, were complicit

in your wife's offending in relation to Charges 1 to 4. Ms Scott transferred the funds into your joint accounts, you assisted with the bookkeeping and you made joint decisions about spending the money.

42 The offending represented by Charges 1 to 4 is serious offending totalling $771,307 from 129 transactions over the period January 2015 to October 2018. In relation to Charge 5, you Yvonne Scott, received from WorkCover $101,038 to which you were not entitled. You James Scott admitted that you assisted your wife in making the WorkCover claims with knowledge that the information provided was false.

43 In relation to each of you, little explanation has been provided as to the reasons for your offending other than you, James Scott, saying in your interview that 'you needed the money'. It seems that while there is little evidence of extravagance, the money seems to have been used in relation to your general expenses and in relation to you running your rural property. Either way no money has been recovered.

44 A victim impact statement prepared by Mr Anderson was tendered on the plea. Mr Anderson writes of the shock he felt when he found out about your thefts. In terms of the financial impact, he writes of the costs he has incurred both due to the amounts you stole and the subsequent legal costs, which eventually led him to selling the company. Mr Anderson also describes the emotional trauma he has experienced after building a relationship of trust with you, Yvonne Scott, over a number of years only to have that trust breached in such a significant way.

Personal circumstances

45 Turning first to you, Yvonne Scott.

46 You are 71 years of age. You were born in the Netherlands, and you are the oldest of four siblings. Your mother was violent and verbally and physically abusive towards you. Your father failed to intervene or protect you from her. You

also report being sexually abused by your brother from the age of twelve until you were old enough to retaliate.

47 You attended primary and secondary school in the Netherlands, completing A Levels at Sydney, before relocating to Sydney. After meeting your husband, you lived together in New South Wales, Alice Springs, Mount Isa, England and various regional locations in Victoria before moving to your current address which is a 124-acre farm home. In the 1970s your two daughters were born. You are now an Australian citizen.

48 As to your employment history, you have worked as a hostess, at Ansett and in bookkeeping in the real estate industry at RT Edgar, Redgarson Pty Ltd and Stride Events. You have experienced interpersonal difficulties and been bullied in various workplaces, particularly at RT Edgar. You ceased working around three years ago.

49 You have also contributed to the community, for example being involved in the Mount Isa Agricultural Show, fostering your neighbour's three children in 1982 and fundraising for various charities in your community. A number of letters from the 1990s from people in your community and those you worked with were tendered on the plea. They speak positively of your work ethic and skills as a bookkeeper. A letter was also tendered from a long-term friend of yours, Nicole Houghton. Ms Houghton writes of your challenging upbringing and mental health issues, describes you as a caring person who contributes to the community and confirms her ongoing support of you.

50 You have struggled with mental health issues for a number of years and have had various admissions to clinics and hospitals when you have been acutely unwell. As discussed above, in 2015 you began seeing Dr Eskandar in relation to work related stress and received WorkCover payments.

51 From April 2016 until early 2019 you had psychological counselling sessions with Psychologist Kim Clancy which was funded by WorkCover.

52 You have undergone Electroconvulsive Therapy and are currently treated with multiple medications. In December last year you spent two weeks as a psychiatric inpatient at Epworth Clinic and you attempted to take your own life on several occasions.

53 A report dated 1 February 2021 was prepared by Dr Aaron Cunningham, psychologist, and tendered on the plea. Dr Cunningham conducted a psychometric assessment and mental state assessment, and in his opinion, you are presenting with Major Depressive Disorder, which manifests in symptoms such as suicidality, depressed mood, sleep disturbance and feelings of worthlessness and guilt.

54 A reported dated 1 July 2021 was prepared by Dr Graham Wong, your treating psychiatrist and tendered on the plea. Dr Wong also diagnosed you with Major Depressive Disorder, with anxiety features arising from your childhood and workplace trauma. Dr Wong continues to treat you.

55 Dr Eskandar continues to be your treating General Practitioner and he prepared a letter dated 22 September 2021. Dr Eskandar writes that your current psychiatric condition is severe and that your PTSD and Major Depressive Disorder symptoms cause clinically significant distress and impairment.

56 Turning now to you, James Scott.

57 You are 78 years of age. You were born in the Netherlands and emigrated to Australia with your family when you were seven years of age. You are the youngest of four children and due to them disapproving of your relationship with Mrs Scott, you have no relationship with them, despite your attempts to reconcile. You lived in Cronulla and Armidale before settling in Inverell in 1954, the year you were granted Australian citizenship. Your father worked as a

toolmaker and farmhand and your mother worked in the home. Your parents died in the 1990s and you had no relationship with your father prior to his death.

58 You were educated by correspondence initially and then attended schools in Inverell, completing your intermediate certificate and eventually HSC at Sydney University. You have had a consistent work history since you were a teenager, having been employed on mines, in costing and stock control and on regional stations as an accountant. You worked as an accountant for almost 25 years as a contractor through Hayes Employment Agency.

59 You have had a number of physical health issues, including a hernia in 2012 and a left rotator cuff injury resulting from a fall for which you received compensation last year. You only have around 30% functioning in your right arm and are medicated in relation to the pain. You have also developed stress as a result of these criminal proceedings and sought counselling to cope with this.

60 A report was prepared by Gina Cidoni, psychologist, dated 6 August 2021 and tendered on the plea. Ms Cidoni outlines your personal history and the results of psychometric testing. Ms Cidoni identifies that you have experienced anxiety since early adulthood and concluded that you suffered from somatic symptom disorder, major depressive disorder and anxiety disorder. Ms Cidoni also formed the view you have schizoid personality disorder. This diagnosis was the subject of some discussion at the plea. Ms Cidoni gave oral evidence on this point and stated that because personality disorders form over a lifetime, this particular disorder was present throughout the offending period. Ms Cidoni also confirmed in evidence that your existing conditions would make prison more difficult for you and that your depressive disorder and anxiety may be exacerbated in the prison environment.

61 Turning to you both, you separated from each other in 2007 but continue to live together under the same roof on your property. Your property is home to nine

horses and whilst you are both retired, you continue to maintain the farm and operate the horse supplies business.

62 You, Mr Scott are in receipt of the Centrelink carer's benefit for the care you provide to you, Yvonne Scott. You both have the support of your daughter Susanna who is 44 years of age, and you speak with her daily. You have had no relationship with your daughter Cassie since she became aware of your offending.

Sentencing considerations

63 Mr Pickering, who appeared on behalf of the Director of Public Prosecutions, submitted that as you stole from both the public and an employer, your offending represents a significant example of dishonesty and as such, he submits that there is a high degree of moral culpability. I accept those submissions. Further, that in cases such as this, general deterrence is the primary sentencing consideration, which is undoubtedly correct.

64 Mr Andrianakis, who appeared on behalf of you, Yvonne Scott, and Mr Lowy, who appeared on behalf of you, James Scott, outlined a number of matters in mitigation.

65 First, I take in to account your early pleas of guilty. As to you James Scott, your matter resolved on 3 March 2021 at a further committal mention. Yvonne Scott, your matter resolved on 31 March 2021 at a further committal mention. Your pleas can be considered as early pleas.

66 Your pleas of guilty have spared what would have been a very lengthy and complex jury trial, due to the number of transactions and the fact that the offending spanned multiple years. Your pleas carry additional weight which must be reflected in a further amelioration in sentence, as the pleas have been entered in circumstances where the pandemic has created a substantial backlog

of cases in the criminal justice system.[1] Your pleas therefore have high utilitarian value which I take into account in your favour.

67 Delay is of some relevance in this case. The offending occurred between January 2015 and March 2018 and charges were not laid until June 2020. This considerable delay, which was not attributable to either of you, has meant that the matter has been hanging over your heads with the real possibility of an immediate term of imprisonment being imposed. Further, since the commission of these offences, you have not further offended on bail.

68 I take into account the conditions that prisoners have been facing due to the COVID-19 pandemic. Prisoners are subjected to lockdowns, quarantine periods and restrictions on personal visits, education and rehabilitative programs. Given the current state of the virus in the community including the prison community, restrictions may remain for some time. I take these matters into account.

69 In relation to your prospects of rehabilitation, you both come before the court with no prior criminal history. Apart from this offending you have both contributed to the community for most of your lives, including positive acts such as fostering children and running charitable events. In the circumstances your risk of reoffending is low and thus, in relation to both of you, I assess your prospects of rehabilitation as excellent. For similar reasons, specific deterrence need not carry great weight in the sentencing equation.

70 In relation to both of you, your age is of relevance. Ms Scott, you are now 71 years of age and you, Mr Scott are 78 years of age. You both suffer from various physical and mental health conditions which, combined with your age, will make prison very burdensome. Further, any prison sentence you serve will represent a larger proportion of your remaining life expectancy. These are matters I take into account.

71 *Yvonne Scott*

[1] *Worboyes v The Queen* [2021] VSCA 169 at [39].

72 Turning to matters specific to you, Yvonne Scott. Mr Andrianakis, who appeared on your behalf, submitted that you have demonstrated genuine remorse for your offending over and above your plea of guilty. Your friend, Ms Houghton, writes of the remorse you have expressed in relation to your conduct. You have pleaded guilty and accepted responsibility. You have also not opposed the compensation orders that have been sought in relation to both victims. In the circumstances I accept that you have shown a degree of remorse.

73 It was also submitted that *Verdins* principles 5 and 6 are enlivened because of your mental impairment and mental health conditions. That is, that imprisonment may weigh more heavily on you than it would on a person in normal health and may significantly adversely impact on your mental health. Having considered the psychological evidence, I accept that submission.

James Scott

74 Turning to maters specific to you, James Scott. Mr Lowy, who appeared on your behalf, submitted that a shorter than usual non-parole period ought be imposed in light all the circumstances including your age, lack of criminal history and lesser role in the offending. Mr Lowy also submitted that your offending in relation to the theft charges lacks the breach of trust element that is a feature of Ms Scott's offending. I accept that the trusted relationship was between Ms Scott and her employer which does elevate the seriousness of her offending. However as noted above, you had full knowledge of her conduct and you admit that decisions about spending the money were made jointly.

75 You have accepted responsibility for your conduct, and you also have not opposed the compensation orders that have been sought in relation to both victims. In the circumstances I accept that you have shown a degree of remorse.

76 I accept the evidence of Ms Cidoni that your psychological conditions will make prison more difficult and that your conditions could well be exacerbated in the prison setting. As such *Verdins* principles 5 and 6 have application in your case.

As to your personality disorder that was extant at the time of the offending, while I accept it is a relevant matter to take into account generally, the evidence in my view does not support a link between the condition and the offending in that it contributed in such a way to make your offending less blameworthy.

77 In relation to both of you as Charges 1 to 4 form part of a series of offences of the same or similar character, pursuant to s 9 of the *Sentencing Act 1991*, an aggregate term of imprisonment is able to be imposed and is appropriate in relation to those charges.

Sentence

78 Ms Scott, please stand.

79 Yvonne Scott, on the theft charges, Charges 1, 2, 3 and 4, pursuant to s 9 of the *Sentencing Act 1991,* you are convicted and sentenced to 2 years and 6 months imprisonment as an aggregate sentence. On Charge 5, obtaining a financial advantage by deception, you are convicted and sentenced to 15 months imprisonment. I direct that 6 months of the sentence on Charge 5 be served cumulatively on the sentenced imposed on charges 1 to 4 making for a total effective sentence of 3 years imprisonment. I direct that you serve 18 months before becoming eligible for parole.

80 Pursuant to s 6AAA of the *Sentencing Act 1991*, if not for your plea of guilty , I would have sentenced you to 4 years and 6 months imprisonment with a non-parole period of 2 years and 6 months.

81 Mr Scott, please stand.

82 James Scott, on the theft charges, Charges 1, 2, 3 and 4, pursuant to s 9 of the *Sentencing Act 1991,* you are convicted and sentenced to 2 years imprisonment as an aggregate sentence. On Charge 5, obtaining a financial advantage by deception, you are convicted and sentenced to 12 months imprisonment. I direct that 4 months of the sentence on Charge 5 be served cumulatively on the

sentenced imposed on Charges 1 to 4 making for a total effective sentence of 2 years and 4 months imprisonment. I direct that you serve 14 months before becoming eligible for parole.

83 Pursuant to s 6AAA of the *Sentencing Act 1991*, if not for your plea of guilty , I would have sentenced you to 3 years imprisonment with a non-parole period of 18 months.

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